

# PUBLIC EMPLOYMENT RELATIONS BOARD

**Lisa Salkovitz Kohn**

## **Fact Finder's Report and Recommendations**

## **I. INTRODUCTION**

This is a fact-finding proceeding held pursuant to the Iowa Public Employment Relations Act. The City of Ottumwa is located in southeast Iowa, and has a population of 24,695. The Association represents a bargaining unit consisting of 3 Assistant Chiefs, 6 Captains, 21 Fire Fighters, a training officer & inspector. The City also has bargaining units of police, library, public works and parks employees.

The City and the Fire Fighters have reached tentative agreement on a number of issues, but reached impasse on five economic issues. The undersigned fact-finder was duly appointed under the rules and procedures of the Iowa Public Employee Relations Board. The hearing was held at Indian Hills Community College, Ottumwa, Iowa, on January 29, 2004, and closed the same day.

## **II. THE ISSUES OUTSTANDING**

### **• Wages**

The Association proposes the addition of a Step E, and increases as follows, without any EMS/EMT pay:

<b>EFFECTIVE JULY 1, 2004 EXHIBIT A - BASE PAY</b>					
<b>Position</b>	<b>A</b>	<b>B</b>	<b>C</b>	<b>D</b>	<b>E</b>
<b>ROOKIE</b>	<b>10.25</b>				
<b>FIRE FIGHTER 1 year</b>	<b>10.71</b>				
<b>1<sup>st</sup> CLASS AFTER 3 YRS</b>		<b>12.25</b>	<b>12.39</b>	<b>12.72</b>	<b>12.97</b>
<b>MASTER FIRE FIGHTERS</b>		<b>13.20</b>	<b>13.36</b>	<b>13.62</b>	<b>13.89</b>
<b>FIRE CAPTAIN</b>		<b>14.24</b>	<b>14.41</b>	<b>14.77</b>	<b>15.35</b>
<b>ASSISTANT CHIEF</b>		<b>15.55</b>	<b>15.80</b>	<b>16.20</b>	<b>16.60</b>

All Line/Crew Fire Fighters above hourly rate shall be based on 2912 hours per year.

<b>TRAINING OFFICER &amp; INSPECTOR</b>	<b>19.89</b>	<b>20.19</b>	<b>20.49</b>	<b>20.90</b>
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Training Officers and Fire Inspector hourly rates shall be based on 2080 hours per year.

- A. Increases and payroll adjustments are effective at the beginning of the pay period closest to the actual due date of the adjustment.
- B. Fire Fighters upon completion of 12 months in steps B-D will move to the next step in their classification.
- C. Fire Fighters who have 12 months or more in Step D as of July 1, 2004 will move to Step E.
- D. Fire Fighters who have less than 12 months in Step D as of July 1, 2004 will move to Step # upon completion of 12 months in their current step.
- E. Rookie Fire Fighters upon completion of 12 months in rookie classification will move to Fire Fighter 1 classification.

- F. Fire Fighters upon completion of 24 months in Fire Fighter 1 will move to 1<sup>st</sup> Class Fire Fighter.  
 G. Date of Rank is the date of promotion or adjustment for each Fire Fighter.

**EFFECTIVE JANUARY 1, 2005  
 EXHIBIT A - BASE PAY**

<b>Position</b>	<b>A</b>	<b>B</b>	<b>C</b>	<b>D</b>	<b>E</b>
<b>ROOKIE</b>	10.25				
<b>FIRE FIGHTER 1 year</b>	10.71				
<b>1<sup>st</sup> CLASS AFTER 3 YRS</b>		12.25	12.39	12.72	13.36
<b>MASTER FIRE FIGHTERS</b>		13.20	13.36	13.79	14.45
<b>FIRE CAPTAIN</b>		14.24	14.41	15.24	16.05
<b>ASSISTANT CHIEF</b>		15.55	15.80	17.05	17.43

All Line/Crew Fire Fighters above hourly rate shall be based on 2912 hours per year.

<b>TRAINING OFFICER &amp; INSPECTOR</b>	19.89	20.19	20.49	21.48
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Training Officers and Fire Inspector hourly rates shall be based on 2080 hours per year.

According to the Union, the cost of its proposal would be \$23,486, or 2% of base payroll, for the first six months, and \$17,934, or 1.4% of base payroll, for the second six months of the contract. Thus, the Union calculates that its proposal seeks a 3.4% increase.

The City proposes that there be no change to the current step plan, but employees would receive step increases, longevity increases and if eligible, EMS pay of \$600 per year, or EMT-Basic pay of \$900 per year.

- **Insurance**

Under the current contract, the City pays 80% of the monthly premium for health insurance coverage. The Association proposes that the City pay 90% of the monthly premium, without any change in the plan benefits. The City proposes that the City contribute 85% of the premium, for a plan that would include a 3-tier prescription drug program, as described more fully below.

- **Holiday Time**

The Association proposes that the current contract language be retained. The City proposes that holiday time be covered by eleven (11) Kelly Days.

- **Sick Leave**

The Association proposes that Article 6 Section 7 be modified to read:

As of July 1<sup>st</sup> of each year the City shall escrow an amount equal to the following formula for each Fire Department member, and provide summarized report [sic]. The City shall hold the funds for each individual until such time that the employee retires. At the time of retirement the City shall use the funds to pay the employee's portion or their spouse's portion of the monthly health insurance premium. The formula for computing the annual amount to be escrowed shall be figured for 40 hour employees by taking 50% of the total accrued sick leave hours in excess of 1920, up to a maximum of 48 hours; and for 56 hour employees by taking 50% of all accrued sick leave in excess of 2688 up to a maximum of 80 hours.

The City proposes that Article 6 Section 7 remain unchanged.

- **Vacation Severance**

The Association proposes that Article 10 Section 8 be modified to read as follows:

An employee who retires or resigns from the City after giving two (2) weeks notice or leaves employment involuntarily, shall be compensated for all accrued vacation leave days to the date of separation.

The daily pay for vacation severance pay shall be figured by dividing Annual pay (base pay plus longevity) by 260 and the formula for computing the number of vacation days shall be figured by dividing the total number of accrued hours by eight (8).

The City proposes that Article 10 Section 8 remain unchanged.

## **II. THE COMPARABLE COMMUNITIES**

The Association asserts that the trends and conditions in comparable communities are a significant factor in resolving impasses on economic issues. Impasse arbitrators are required by Section 20.22 (9) of the Public Employment Relations Act to consider such comparisons, and it therefore behooves a fact-finder also to take note of such trends. The Association has proposed that the Fact-Finder consider the following communities, the cities in Iowa of populations between 20,000 and 30,000 that employ career fire fighters:

Mason City	28,464
Marion	27,611
Clinton	27,443
Marshalltown	26,102
Burlington	26,048
Ft. Dodge	24,897
<b>Ottumwa</b>	<b>24,695</b>
Muscatine	22,650

However, the City insists that without sufficiently detailed and comprehensive information about the negotiations and circumstances in those communities, it is impossible to understand the bargains struck by labor and management for particular contract provisions.

As a result, the City has not proposed a single set of comparable communities for the fact-finder's reference in assessing all issues, but refers to different groupings for different issues.

## **V. DISCUSSION**

### **• Wages**

The Association contends that its wage proposal is the more reasonable because it is a modest increase, within the 3 - 4 % increases in the comparable communities. The increase proposed is end-loaded, and targeted at the "populated" points on the wage schedule, that is, the increases are not scheduled for those points on the schedule that would not benefit a current employee. In addition, the Association notes that its proposal is designed to provide greater increases for more senior employees, in an effort to correct the comparative degradation in rank that occurs as the rates for more senior Ottumwa employees are compared with their peers in other communities. In addition, Ottumwa pays its captains less than all of the comparable communities except Burlington, and pays its assistant chiefs less than the four other comparable communities that have that classification. This disparity also impacts the amount of pension paid to retired Ottumwa fire fighters. The addition of a step E is reasonable, the Association contends, because other City employees have more steps than the fire fighters. In comparison, the fire fighters salary path is very flat: At their highest step, police are paid 21.9% more than at their lowest step, and public works employees are paid 13.6% more than at their lowest step, while fire fighters at the top step are paid only 5.1 % than at the first step. As for internal comparisons, the Association observes that the police will be getting a 4% increase, the library employees a 2.5% increase, and the public works and parks employees are still in negotiations for a contract. The Association notes that the Fire Department workload has increased by 327% since 2001, as a result of the Department's undertaking to answer emergency medical service calls, while overtime has been eliminated recently, costing each firefighter an average of \$2000 per year.

The City contends that the Association's proposal represents a 4.9% increase, including the current step and longevity increases along with the "new money." In contrast, the City notes that its proposal is not a "zero percent increase" because fire fighters will progress within the wage schedule, and that advancement alone, together with the proposed EMS pay will increase the payroll by 3%. The City urges that its EMS pay proposal be adopted because the fire fighters' voluntary EMS/EMT qualification benefits the City and should be rewarded. When the Fire Department encouraged fire fighters to take EMS/EMT training, the City represented that it would seek to negotiate this benefit,

and indeed EMS/EMT pay was part of the Association's early bargaining proposal. Of the seven comparable communities identified by the Association, five provide some form of EMT compensation, though only the City would provide EMS pay. Only five members of the bargaining unit would not be eligible for either First Responder or EMT pay. The Association objects to EMS/EMT pay, even though it was part of the Association's original bargaining proposals, noting that it had proposed the pay as part of a package that included increases in base pay, not as a replacement for such increases.

At present, the City projects that it will 45% of its FY 2005 budget on the Police Department, and 38% on the Fire Department. The City calculates that in the period from 1999 to 2005, when General Fund Revenue decreased 12.6%, the Fire Fighters received pay increases totaling 26%. As a result of growth in the Fire and Police budgets, the City has had to reduce its spending on parks and other services. The City objects to an across-the-board increase, because higher paid employees receive greater increases than those at lower steps and lanes, but also objects to increases that target the higher-paid because this will increase the disparities.

A Fact-finder is not limited to selecting one party's final offer or the other's, but may fashion his or her own recommendation. In this case, neither proposal is ideal. The Association proposal is not an "across the board" increase; increases in the schedule are made only where firefighters populate the wage grid. There is no increase in the four lowest wage rates in the grid, nor in the wages at any step for the Training Officer & Inspector, while the proposed increases between Steps C and D for the Captains and Assistant Chiefs, and between Step D and the new Step E in most classifications, are grossly disproportionate to increases elsewhere in the grid. On the other hand, to limit the increases to the existing step increases (which will not benefit all fire fighters), with only the addition of the flat sum EMS/EMT pay lags behind the increases being settled in the comparable communities identified by the Association. The City's EMS/EMT pay proposal represents an increase of only \$20,100, or roughly 1.6% of the base payroll.<sup>1</sup> That is far below the 3% and 4% raises being negotiated in comparable communities.<sup>2</sup>

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<sup>1</sup>The parties provided limited information about the total payroll, so that it is impossible to cost out precisely any proposals other than their own. However, if \$62,500 is 5% of the base payroll, as the Association represented in its argument, then \$20,100 is roughly 1.6% of that payroll. I do not include step increases and longevity in this calculation because the employees are already entitled to those increases, as of July 1, 2004 – I am speaking of newly-negotiated increases only.

<sup>2</sup>It is also below the 4% that the police received this year. The City explains that this increase is the second year of a two-year contract that was negotiated before the State and the City ran into the current fiscal crisis, and does not represent the deal that would be struck today. Although the library employees will be receiving a 2.5% increase, the City objects that they are not an appropriate comparison group because their wages are negotiated by the Library Board of Trustees, who are outside the control of the City Council and have access to funds other than the City's general revenues. Under these circumstances, I find the external

The range of 3 - 4 % for the total increase in payroll seems appropriate, particularly since the fire fighters have lost the opportunity to earn overtime. At the same time, the City's rationale for the First Responder/EMT pay is compelling.<sup>3</sup> Accordingly, I propose that the parties adopt the City's proposal for First Responder/EMT pay, which will increase the payroll by \$20,100, and adopt an evenly-applied across-the-board increase of 2%, without adding a Step E. This will protect the lowest end of the wage schedule from falling behind other communities, a situation that could hamper the City's ability to attract new fire fighters should the need arise.

- **Insurance**

The Association notes that in five of its comparable communities, the city pays 100% of the premium; of the other two, Muscatine pays approximately 85%, and Marshalltown pays approximately 95%. In FY 2004, the City's 80% share was \$576 out of an \$720 total premium, and the employee paid \$144.00. As of July 1, 2004, the City projects that the total premium will be \$840, so under the current contract, its share would be \$672, and the employee's share \$168. However, under the Association's proposal, the City would pay 90% of \$840, or \$756, and the employee would pay 10%, or \$84. The City proposes to increase its share to 85%, or \$714, and the employee would pay 15%, or \$126.

Even the Association's proposal represents an increase of over 500% in the employee's premium costs from FY 2002 to FY 2005. The Association observes that under the City's proposal, while the employee would save 5% of the premium cost, that savings could easily be consumed and exceeded by the co-pays under the new drug card plan. The City reports that it is in the process of getting a consultant to identify alternatives to the current self-funded program but that the administration is not in a position to propose alternatives yet. In the meantime, the City contends, it is paying the bulk of the increases in health insurance costs. The 3-tier drug card will help limit cost increases and will benefit at least those people who are relatively healthy, the City asserts.

Health insurance issues remain among the most difficult faced at the bargaining table, and the ones over which the negotiators have the least control. The record before me contains little information about how and why this cost-containment measure, the 3-tier drug card, has been proposed, and how it impacts the current premium cost. Nor did either party offer claims experience data from which it might be determined how much employees

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comparisons more instructive than the internal comparables.

<sup>3</sup>Although the Association objects that is unfair to pay some fire fighters EMS or EMT pay, when all fire fighters on the truck participate in responding to the emergency, regardless of their certification, the fact remains that the EMS and EMT certification ensures that the fire fighter has received the specified training, and as a result only EMS- or EMT-certified individuals may perform certain paramedical tasks.

might be expected to pay as a result of the new drug card. With so little data to gauge the impact on either the City or the employees, it is difficult either to select one proposal or the other, or to propose an alternative. However, co-pay options generally are considered to provide cost-containment, as well as cost-shifting (to the employee), because an employee who faces a higher co-pay cost is expected to use the benefit more judiciously than one who does not, and such multi-tier plans are becoming more widespread. The steady increase in premiums warrants some action to limit the trend, which deprives either the City or the employees of financial resources that could be put to other uses. Therefore, the fact-finder recommends that the parties adopt the 3-tier drug card, but also agree that the City shall pay 90% of the premium, as a means of off-setting the added drug costs, which may be substantial for some employees.

- **Holiday Time**

The City proposes to replace the current holiday provision and provide holidays as Kelly Days, increasing the number of holidays to 11, the number of holidays available for all other City employees. The City asserts that it has become increasingly difficult to insure that all shifts are fully staffed. Even though the City has reduced the size of the minimum crew by one fire fighter, the City has also mandated that the Fire Department eliminate overtime costs, and the Fire Department has been refused permission to hire an additional three fire fighters, as was once anticipated, the City contends. Fully staffed, the Department as nine people working on each shift, in addition to the Fire Chief. This means that there are at most four fire fighters per truck. The minimum is three per truck, so the Department does not want to have fewer than seven fire fighters on duty on any shift. However, the City reports that, given the many ways that fire fighters may take time off, and their ability to select vacation by seniority, the Department has repeatedly dropped down to and below that seven person threshold. The City asserts that, while employees reasonably desire control of their family and free time, their schedule provides adequate time off, and the City must act to maintain staffing levels for the protection of the public.

The City contends that its Kelly Day holiday proposal solves this problem. Even though the parties have operated without Kelly Days since 1976,<sup>4</sup> the City urges that its proposal is the more reasonable in light of the changed circumstances. The City asserts that Marshalltown has switched to Kelly Days, but there is no evidence that any other cities have done so. The assignment of Kelly Days in 11 out of 12 months would even out the distribution of holidays off, and ensure more reliable staffing levels.

The Association objects that this proposal was never discussed in detail, and that

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<sup>4</sup>The bargaining history of the Holiday Leave Time provision is that the provision was written into the parties' first collective bargaining agreement in 1976, and was only modified once, in 1984, when the time off was divided between vacation leave and floating holidays. Other than 1984 and this year, Holiday Leave Time has never been an issue at contract negotiations.



this proposal is designed to fix problems that the City itself has caused, by limiting hiring and overtime at the same time, and trying to run the Department with too few employees. The fire fighters should not be required to give up their current flexibility to schedule holidays to solve a problem of the City's making, the Association asserts.

The City's cost control efforts are understandable, in light of the economic pressures that Ottumwa, like most Iowa cities, has experienced recently. However, the City's proposal is a drastic change in the method of scheduling holidays, and may result in other unintended consequences as well. Such a significant alteration in a basic term of employment is far better obtained at the bargaining table, where the final agreement will be the result of give and take among the parties, and the precise operation of a new system thoroughly discussed and tailored to the parties' needs before adoption and implementation. Were the circumstances dire, and no other reasonable solution conceivable, a dramatic change imposed by a neutral might be warranted, but it does not appear that matters have reached that point yet. I therefore recommend that the parties reject the City's proposal and adopt the Union's proposal to leave the holiday language unchanged.

- **Sick Leave**

The Association proposes that Article 6 Section 7 be modified to read:

As of July 1<sup>st</sup> of each year the City shall escrow an amount equal to the following formula for each Fire Department member, and provide summarized report [sic]. The City shall hold the funds for each individual until such time that the employee retires. At the time of retirement the City shall use the funds to pay the employee's portion or their spouse's portion of the monthly health insurance premium. The formula for computing the annual amount to be escrowed shall be figured for 40 hour employees by taking 50% of the total accrued sick leave hours in excess of 1920, up to a maximum of 48 hours; and for 56 hour employees by taking 50% of all accrued sick leave in excess of 2688 up to a maximum of 80 hours.

The City proposes that Article 6 Section 7 remain unchanged.

Under the current agreement, there is no escrow, except that

Employees who have more than ten (10) years seniority in the Ottumwa Fire Department may choose to remain under the sick leave policy in effect prior to July 1, 1991, which provides that employees are paid one-half of accumulated sick leave up to a maximum of \$5,000.00 upon retirement. (Article 6, Section 7, second paragraph)

Employees currently receive a sick leave payout on the payday closest to December 1 of each year. That payout is limited to 25% of the accrued sick leave in excess of 1920 hours, up to a maximum of 48 hours for 40-hour-week employees, and 25% of the leave in excess of 2688 hours, up to a maximum of 68 hours, for 56-hour-week employees. Thus the Association proposal postpones the payout until retirement, doubles the payout proportion amount that would accrue each year, and increases the maximum number of

hours that 56-hour-week employees can "recapture." The Association acknowledges that this is a substantial change, but complains that the March 15 statutory deadline limited the parties' opportunity to explore other alternatives.

The City responds that this proposal would increase its costs by approximately \$20,000, without any compelling reason to do so. Based on the payouts in 2003, only 16 members of the bargaining unit would benefit from this change, and none of the other comparable communities identified by the Association has an annual payout.

Based on this record, I cannot recommend a change to Article 6 Section 7. Sick leave is not intended to boost income; it is intended to provide a financial safety net in the event an employee cannot work due to, among other things, illness. The existing provision rewards employees who avoid taking all their sick leave, by allowing them to accrue the leave, up to a limit, in case of catastrophe. It also further discourages abuse by allowing a "cash-out" of part of the unused leave that exceeds the accrual limit. There is no evidence, from internal or external comparables, or from any circumstances intrinsic to this bargaining unit, that the richer payout escrow provision is warranted. I therefore recommend that the Association's proposal for a revised Article 6 Section 7 be rejected and that section left unaltered.

- **Vacation Severance**

The Association proposes that Article 10 Section 8 be modified to read as follows:

An employee who retires or resigns from the City after giving two (2) weeks notice or leaves employment involuntarily, shall be compensated for all accrued vacation leave days to the date of separation.

The daily pay for vacation severance pay shall be figured by dividing Annual pay (base pay plus longevity) by 260 and the formula for computing the number of vacation days shall be figured by dividing the total number of accrued hours by eight (8).

The City proposes that Article 10 Section 8 remain unchanged.

The current provision has been the subject of repeated arbitrations. At present, Article 10, Section 8 states:

An employee who leaves the employment by resigning or retiring from the City and after giving two (2) weeks notice, shall be compensated for all accrued vacation leave to the date of separation. The same benefits shall be received for layoffs or job abolishment.

The daily pay for vacation severance pay shall be established at the termination day from the following formula: annual pay (base pay plus longevity) divided by two hundred sixty (260) equals daily pay:

$$\frac{\text{annual pay (base pay plus longevity)}}{260} = \text{daily pay}$$

The problem arose because of the unusual schedules worked by fire fighters. Thus, most bargaining unit employees are 56-hour-week employees. They work 2912 hours each year, in 260 workdays. Dividing the 2912 hours by 260 days results in the determination that the workday for vacation purposes is 11.2 hours. Because the year consists of 260 workdays, a "daily" rate is calculated by dividing the annual pay by 260, the formula in Article 10, Section 8.

In its proposal, the Association in effect seeks to use an 11.2 hour day to calculate one day's vacation pay, but then wants to use an 8 hour day to decide how many vacation days an employee will get vacation pay for. (The shorter the day, the more of them to multiply by the daily vacation pay rate, since vacation accrual was calculated on an hourly basis.) This was its position in the three separate arbitrations before Cyrus Alexander(1998), Eric Lawson (1999) and Herbert Berman (2001). Lawson and Berman recognized this inconsistency, held that the parties had not intended that result in Article 10 Section 8, and rejected that interpretation.

Having failed to prevail in arbitration, the Association now endeavor to obtain the City's agreement to alter the language to conform to the Association's desired method of calculating the vacation payout. However, I cannot recommend the change, not because of the arbitration decisions, but because the Association's proposal would provide one rate for accruing vacation hours, and another rate for cashing them out, resulting in a greater payout to the employee than a straight equivalency. The parties have fought this battle extensively, and I do not think it is appropriate for a neutral to impose a strongly resisted formulation that will import into the contract a calculation that is mathematically inconsistent, and that provides, in the words of Arbitrator Berman, "an extra-contractual bonus to retiring employees." The parties may voluntarily agree to the change, but it should not be unilaterally imposed. I therefore recommend that the parties adopt the City's proposal to leave Article 10 Section 8 unchanged.

## **VII. CONCLUSION**

For the reasons stated above, I recommend as follows:

1. **Wages:** I recommend that the parties adopt the City's proposal for First Responder(EMS)/EMT pay, and adopt an evenly-applied across-the-board increase of 2%, without adding a Step E.
2. **Insurance:** I recommend that the parties adopt the 3-tier drug card

proposed by the City and that the City pay 90% of the premium for insurance, rather than the current 80% rate.

3. **Holiday Time:** I recommend that the holiday language be left unchanged, and that the City's proposal be rejected.
4. **Sick Leave:** I recommend that the Association's proposal for a revised Article 6 Section 7 be rejected and that section left unaltered.
5. **Vacation Severance:** I recommend that the language of Article 10 Section 8 be left unchanged, and that the Association's proposal be rejected.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read 'Lisa Salkovitz Kohn'.

Lisa Salkovitz Kohn

February 13, 2004

CERTIFICATE OF SERVICE

RECEIVED  
2004 FEB 17 AM 10:42  
IOWA PUBLIC EMPLOYMENT  
RELATIONS BOARD

I certify that on the 13th day of February, 2004, I served the foregoing Fact Finder's Report and Recommendations upon each of the parties to this matter by sending a copy to them by Priority Mail First Class Mail at their respective addresses as shown below:

Steve Rasmussen  
City Administrator  
City of Ottumwa  
105 East Third Street  
Ottumwa, IA 52501

Jack Reed  
State President  
Iowa Professional Fire Fighters  
1231 8 th Street  
Suite 240  
West Des Moines, IA 50265

I further certify that on the 13th day of February, 2004, I will submit this Award for filing by mailing it to the Iowa Public Employment Relations Board, 514 East Locust, Suite 202, Des Moines, Iowa 50309.

  
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Lisa Salkovitz Kohn, Fact Finder